

REQUEST FOR PROPOSALS (RFP)

ISSUE DATE: February 28, 2005

TITLE: Independent Review Organization Services

RFP Number: OHB05-1

ISSUING AGENCY: Commonwealth of Virginia
Department of Human Resource Management
James Monroe Building, 13th Floor
101 North 14th Street
Richmond, Virginia 23219

PERIOD OF CONTRACT: July 1, 2005 through June 30, 2007. Renewable in accordance with section 6.15

Sealed proposals for furnishing services described herein will be received subject to the conditions cited herein until 3:00 p.m., March 31, 2005.

All Inquiries Must Be In Writing and Directed To:

Mr. William G. Gregory
Department of Human Resource Management
James Monroe Building, 13th Floor
101 North 14th Street
Richmond, Virginia 23219
Fax Number: (804) 225-2790

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS SHOWN ABOVE.

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 11-35.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

In compliance with this Request for Proposals, and to all the conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish materials and services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Name and Address of Firm:

Date: _____

By: _____
(PRINTED NAME)

(SIGNATURE IN INK)

Title: _____

Zip Code: _____

Fax
Number: () _____

Telephone: () _____

PRE-PROPOSAL CONFERENCE: An optional pre-proposal conference will be held on Tuesday, March 15th, 10:00 a.m. at the James Monroe Building. (Reference Paragraph 3.8)

TABLE OF CONTENTS

- 1.0 Introduction**
- 2.0 Statement of Needs**
- 3.0 Procurement Procedures**
- 4.0 Form of Response and Criteria**
- 5.0 General Terms and Conditions**
- 6.0 Special Terms and Conditions**

EXHIBITS

Exhibit 1 - Claims Break Down

Exhibit 2 – Small, Women Owned And Minority Business

Exhibit 3 - Current Appeal Process Overview

Exhibit 4 – HIPPA Privacy Business Associate Agreement

APPENDICES

Appendix 1 - Current Standard Contract

Appendix 2 - Pricing Schedule

1.0 INTRODUCTION

1.1 Purpose

The purpose of this Request for Proposals (RFP) is to solicit sealed proposals to establish a contract through competitive negotiation for the purchase of Independent Review Organization Services for the Department of Human Resource Management.

1.2 Background

The Department is seeking an organization capable of reviewing denials of care appealed by employees and their dependents covered by the Department's self-funded health insurance plans. The review shall pertain only to the issue of medical necessity and will not address whether the service is a covered service as defined by the plan. The term "Medically Necessary" is defined as a service required to identify or treat an illness, injury, or pregnancy related condition which a Provider has diagnosed or reasonably suspects. To be Medically Necessary, the service **must**: (1) be consistent with the diagnosis of the condition; (2) be in accordance with standards of generally accepted medical practice; (3) not be for the convenience of the patient, the patient's family, or the provider; and (4) be the most suitable, cost-effective supply or level of service which can be safely provided, and (5) be a covered benefit under the Commonwealth's Health benefit Plans. The plan will retain the right to determine if the service is a covered expense under the terms and conditions of the State's Health Benefits Plan.

Please see exhibit one for work load statistics.

1.3 Policy Regarding Participation of Small, Women, and Minority Owned Businesses

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in state procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses and plans for involvement on this contract are required. By submitting a proposal, offerors certify that all information provided in response to this RFP is true and accurate. Failure to provide information required by this RFP will ultimately result in rejection of the proposal.

All information requested by this RFP on the ownership, utilization, and planned involvement of small businesses, women owned businesses, and minority owned businesses must be submitted. If an offeror fails to submit all information requested, the purchasing agency will require prompt submission of missing information after the receipt of vendor proposals in order for a non-compliance proposal to be considered.

1.4 Appendices

Appendix 1 is the current standard contract.

Appendix 2 is the Pricing Schedule

2.0 Statement of Needs

2.1 Case Reviews

1. The contractor shall receive and control cases referred by the Department within one business day.
2. The contractor shall perform an initial review and assign cases to (a) professional reviewer(s) within two business days of receipt and control. The professional reviewer(s) shall be impartial. *Impartial* means the reviewer(s) have no relationship or association with (1) the covered employee or a member of the covered employee's immediate family, (2) the treating health care provider, the provider's employees, or the provider's affiliates, (3) the medical facility at which the service was or would be provided, the facility's employees, or the facilities affiliates, or (4) the development or manufacture of the drug, device, procedure or other therapy which has been denied in this case.
3. The contractor shall substantively review the case and respond to the Department within five business days of the assignment of the case to (a) professional reviewer(s).
4. The professional reviewer(s) shall examine the case as submitted and determine, with the burden of proof on the appellant, (1) that the denial was/was not objective, (2) that the denial was/was not the only clinically valid course of action, or that the denial was at least one of a range of more than one clinically valid courses of action, and (3) that the denial was consistent with the generally accepted principles guiding the provision of health care. *Generally accepted* means that the principles in question are supported by the prevailing actual practice of providers of care or by peer reviewed medical literature.
5. The decision of the contractor shall be documented as to (1) the credentials of the reviewer(s), (2) the impartiality of the reviewer(s), (3) the scope of the review, including any findings of fact with respect to material issues, and the bases for those findings, (4) each of the elements denoted in 2.1.4.

2.2 Confidentiality

All operations of the contractor shall be conducted in such a manner that all medical records are held in the utmost confidence, and such operations shall strictly adhere to the provisions of state and federal laws regarding confidentiality of medical information.

2.3 Mandatory Qualifications

1. The offeror shall have been engaged in the business of medical utilization review or medical peer review since, at least, January 1, 2000.
2. The offeror shall have reviewed at least 1,000 cases or providers.
3. The offeror shall have documented care guidelines in all commonly disputed areas of practice and, specifically, in the areas of therapies (physical, speech, etc.), rehabilitation, mental illness and substance abuse.

4. The offeror must demonstrate that it has a panel of highly qualified reviewers across medical specialties who were selected for their service after a formal certification process.
5. The offeror shall currently be the medical peer review or utilization review contractor for a single organization responsible for at least 100,000 lives.

3.0 PROCUREMENT PROCEDURES

3.1 Method of Award

1. The Department shall select two or more Offerors deemed to be fully qualified and best suited among those Offerors submitting proposals, unless the Department has made a determination in writing that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration. The selection of Offerors will be based on the evaluation factors included in this RFP. Negotiations shall be conducted with the selected Offeror(s). Price shall be considered when selecting finalists for negotiation, but shall not be the sole determining factor.
2. After negotiations have been conducted with each selected Offeror, the Department shall select the Offeror which, in its opinion, has made the best proposal. The Department shall award the contract to that Offeror. The Department may cancel this RFP, or reject proposals at any time prior to an award. The Department is not required to furnish a statement of the reason why a particular Offeror was not deemed to have made the best proposal (Section 2.2-4359, Code of Virginia).
3. Should the Department determine in writing, and in its sole discretion, that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
4. The contract will incorporate by reference all the requirements, terms and conditions of this RFP and the Contractor's proposal, except as either or both may be amended through negotiation. All statements and representations, written or verbal, relating to the award of this and renewal contracts must be construed to be consistent with the following.

3.2 Submission of Written Proposals

1. All proposals must be in the form requested. The data required in response to this RFP is subject to verification. Material errors shall be a basis for rejecting such a proposal. An original and five copies shall be delivered in a sealed box, and labeled as a proposal, with the words "**Do Not Open**" and **Independent Review Organization Proposal** prominently displayed on the face of the box. Proposals must be received no later than 3:00 p.m. on Thursday, March 31st. 2005, by:

Mr. William G. Gregory
Department of Human Resource Management
James Monroe Building, 13th Floor
101 North 14th Street
Richmond, Virginia 23219

Each copy of the proposal should be bound in a loose-leaf notebook. All documentation submitted with the proposal should be contained in that single volume. (If necessary, additional notebooks may be submitted in clearly marked and referenced sequence.)

2. Ownership of all data, materials and documentation originated and prepared for the Department pursuant to the RFP shall belong exclusively to the Department and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of Section 2.2-4342 of the Code of Virginia, in writing, at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified as required and must indicate only the specific words, figures, or paragraphs which constitute trade secrets or proprietary information. The Department, in its sole discretion, may not consider proposals with unduly broad requests for protection against disclosure.

3.3 Modification of Proposals

Any changes, amendments or modifications of an offeror's proposal prior to the deadline for receipt of proposals must be in writing and submitted in the same manner as the original proposals. All modifications must be labeled conspicuously as a change, amendment, or modification of the previously submitted proposal. Changes, amendments, or modifications of proposals will not be considered after the deadline for receipt of proposals, except when the Department requests modifications.

3.4 Inquiries Concerning the RFP

Any communication concerning this RFP or any resulting contracts must be addressed in writing to:

Mr. William G. Gregory
Department of Human Resource Management
James Monroe Building, 13th Floor
101 North 14th Street
Richmond, Virginia 23219
Fax Number: (804) 225-2790
E-mail Address: bill.gregory@dhrm.virginia.gov

3.5 Public Inspection of Procurement Records

Proposals will be subject to public inspection only in accordance with Section 2.2-4342 of the Code of Virginia.

3.6 Clarification Of Proposal Information

The Department reserves the right to request verification, validation or clarification of any information contained in any of the proposals. This clarification may include checking references and securing other data from outside sources, as well as from the offeror.

3.7 Reference To Other Materials

The offeror cannot compel the Department to consider any information except that which is contained in its proposal, or which is offered in response to a request from the Department. The offeror should rely solely on its proposal. The Department, however, reserves the right, in its sole discretion, to take into consideration its prior experience with offerors and information gained from other sources.

3.8 Optional Pre-Proposal Conference

An optional pre-proposal conference will be held at 10:00 a.m. on Tuesday, March 15th, 2005, in the James Monroe Building, Main Level Conference Room D, 101 North 14th Street, Richmond, Virginia. The purpose of this conference is to allow potential offerors an opportunity to present questions and to obtain clarification relative to any facet of this procurement.

Attendance at this conference is not a prerequisite to submitting a proposal. Offerors who intend to submit a proposal are invited to attend. Attendance at the conference will be documented by the representative's signature on the attendance roster.

It is requested that any known questions regarding the RFP be forwarded to Bill Gregory prior to date of conference to facilitate the conference. The fax number is (804) 225-2790 or they may be e-mailed to bill.gregory@dhrm.virginia.gov.

Offerors should bring a copy of this RFP to the conference. Any changes, which result from this conference, will be issued in a written addendum to the RFP.

3.9 Timetable

RFP Published	February 28, 2005
Optional Pre-Proposal Conference	March 15, 2005
Proposals Due 3:00 P.M.	March 31, 2005
Notice of Intent to Award	June 1, 2005

4.0 FORM OF RESPONSE AND CRITERIA

4.1 General

Each proposal shall be in the form of a loose-leaf binder, tabbed to point to each section below. **Before** the first tab, place the executed RFP Cover Sheet followed by a statement defining those sections of your proposal which may not be released because they are proprietary. Each page so designated shall also be marked "Confidential: Proprietary Information," and, if not so marked, shall not be protected. One original proposal and five copies are required. The original shall contain a Cover Sheet bearing an original signature signed in **blue ink** and be **labeled on the cover as "Original"**.

4.2 Participation of Small, Women, and Minority Owned Businesses

Complete the information required on Exhibit TWO.

4.3 Criteria for Evaluation

Proposals will be evaluated on seven criteria: Credentialing Process (10); Credentials of Reviewers (20); Extent and Documentation of Care Guidelines (20); Experience in Utilization/Peer Review (10); Financial Stability (10); Cost (25); and Small, Women and Minority Owned Business (5).

4.4 Compensation

The Department will consider a flat rate for each appeal or other compensation proposals. The proposed rate structure must be fully documented in the response to the RFP.

5.0 GENERAL TERMS AND CONDITIONS

5.1 Vendor's Manual

This solicitation is subject to the provisions of the Commonwealth of Virginia Vendor's Manual and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is normally available for review at the Department's office on the 13th floor of the James Monroe Building. In addition, a copy can be obtained from the Department of General Services' Division of Purchases and Supply by calling (804) 786-3842.

5.2 Applicable Laws and Courts

This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The contractor shall comply with all applicable federal, state, and local laws, rules, and regulations.

5.3 Anti-Discrimination

By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act, and Section 2.2-4311 of the Virginia Public Procurement Act.

In every contract over \$10,000 the provisions in 1 and 2 below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

- c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The contractor will include the provisions of 1 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

5.4 Ethics In Public Contracting

By submitting their proposals, offerors certify (1) that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor in connection with their proposal, and (2) that they have not conferred on or promised, any public employee having official responsibility for this procurement transaction, any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, unless consideration of substantially equal or greater value was exchanged.

5.5 Immigration Reform and Control Act of 1986

By submitting their proposals, offerors certify that they do not and will not, during the performance of this contract, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

5.6 Debarment Status

By submitting their proposals, offerors certify that the Commonwealth of Virginia does not currently debar them from submitting proposals for the type of goods or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

5.7 Antitrust

By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title, and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

5.8 Mandatory Use of State Form and Terms and Conditions

Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

5.9 Clarification of Terms

If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact Bill Gregory no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Department.

5.10 Payment

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payments address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payments in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s) in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) day following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee.

These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

5.11 Precedence of Terms

Paragraphs 5.1 - 5.10 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

5.12 Qualifications of Offerors

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services contemplated therein.

5.13 Testing and Inspection

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification.

5.14 Assignment of Contract

A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

5.15 Changes to the Contract

Changes can be made to the contract in any one of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. The Department may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to such things as services to be performed, the method of packing or shipment and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Department a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Department's right to audit the contractor's records and/or to determine the correct number of units independently; or

- c. By ordering the contractor to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Department with all vouchers and records of expenses incurred and savings realized. The Department shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Department within thirty (30) days from the date of receipt of the written order from the Department. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall resolve in accordance with the procedures for resolving disputes provided by the Disputes Clause (paragraph 8.8) of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia's Vendor's Manual. Neither the existence of claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Department or with the performance of the contract generally.

5.16 Default

In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

5.17 INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's Compensation - Statutory requirements and benefits.
2. Employee Liability - \$100,000
3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

5.18 eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

- 1 eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.
- 2 eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.
- 3 Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

Note: Vendors are strongly encouraged to register your company prior to submitting a bid or offer. Failure to register will result in your bid or offer being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

6.0 SPECIAL TERMS AND CONDITIONS

6.1 Advertising

In the event a contract is awarded as a result of this RFP, the contractor shall not advertise that the Commonwealth of Virginia, or any agency or institution of the Commonwealth, has purchased, or uses its products or services.

6.2 Audits

The contractor shall assist the Department and the Department's auditors, who may be employees of the Department, employees of other contractors, or agents of the Department, in the conduct of audits. This assistance shall include the provision of secure, quiet office space, including furnishings and telephones needed by the auditors.

The contractor agrees to retain all books, records, and other documents relative to the contract which results from this RFP for five (5) years after final payment, or until the conclusion of any audit by the Commonwealth, whichever is sooner. The Department, its authorized agents, and

state auditors, shall have full access to, and the right to examine, any of the contractor's materials relevant to the contract which results from this RFP.

6.4 Certified Corporate Annual Reports

Within 120 days of the close of its fiscal year, the contractor shall furnish to the Department an annual report of its consolidated operations. An independent auditor shall certify this report.

6.5 Confidentiality of Information

The contractor shall treat all information utilized in its performance of the contract as confidential, personal information. The contractor shall handle all confidential information in accordance with the Virginia Privacy Protection Act, Virginia Code Section 2.1-377 et seq. All files, computer databases and other records developed or maintained pursuant to the execution of the contract are the property of the Department, and shall be delivered to the Department upon demand.

6.6 Contract Representatives

Both the Department and the Contractor shall appoint a contract representative who shall ensure that the provisions of this contract are adhered to. The Department hereby appoints the State Procurement Specialist Senior. Currently the position is held by Mr. William G. Gregory. His e-mail Address is bill.gregory@dhrm.virginia.gov.

The contractor shall provide the full name and address of their contract representative including telephone and fax number. In the event of a change in contract representatives, an official written notice shall be provided within 15 days of the change.

6.7 Contractor Affiliation

If an affiliate (as defined below in this paragraph) of the contractor takes any action which, if taken by the contractor, would constitute a breach of the contract, the action taken by the affiliate shall be deemed a breach by the contractor. "Affiliate" shall mean a "parent," subsidiary or other company controlling, controlled by, or in common control with the contractor, subcontractor or agents of the contractor.

6.8 Disputes

In accordance with section 2.2-4363 of the Code of Virginia, disputes arising out of the contract, whether for money or other relief, may be submitted by the contractor for consideration by the Department. Disputes must be submitted in writing, with all necessary data and information, to the Director of the Department of Human Resource Management at the James Monroe Building, 12th Floor, 101 North 14th Street, Richmond, Virginia 23219. Disputes will not be considered if submitted later than sixty (60) days after the final payment is made by the Department under the contract. Further, no claim may be submitted unless written notice of the contractor's intention to file the dispute has been submitted at the time of the occurrence or at the beginning of the work upon which the dispute is based. The Department shall render a final written decision regarding the dispute not more than ninety (90) days after the dispute is submitted, unless the parties agree to an extension of time. If the Department does not render its decision within 90 days, the contractor's sole remedy will be to

institute legal action, pursuant to section 2.2-4364 of the Code of Virginia. The Contractor shall not be granted relief as a result of any delay in the Department's decision.

During the time that the parties are attempting to resolve any dispute, each party shall proceed diligently to perform its duties.

6.10 Drug Free Work Place

The contractor acknowledges and certifies that it understands that the following acts by the contractor, its employees, and/or agents performing services on state property are prohibited:

1. The unlawful manufacture, distribution, dispensing, possession or use of alcohol or drugs; and
2. Any impairment or incapacitation from the use of alcohol or drugs (except the use of legal drugs for legitimate medical purposes).

The contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract any may result in default action being taken by the Commonwealth in addition to any criminal penalties that may result from such conduct (Paragraph 5.16).

6.11 Liability

There shall be no liability on the part of and no cause of action shall arise against any officer or employee of the contractor for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

6.12 Force Majeure

Neither party shall be deemed to be in default of any of its obligations hereunder, if, and so long as, it is prevented from performing such obligations by an act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

6.13 Indemnification

The contractor agrees to indemnify, defend, and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages, and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the Department.

6.14 Subcontracting

The contractor is fully responsible for all work performed under the contract. The contractor may not assign, transfer, or subcontract any interest in the contract, without prior written approval of the Department. The contractor shall require all subcontractors to comply with all provisions of this RFP. The contractor will be held liable for contract compliance for all duties and functions whether performed by the contractor or any subcontractor.

6.15 Term and Renewal of Contract

The term of this contract is two years with three one-year renewal options. For the one-year renewal options, the contract may renew annually subject to the following.

- 6.15.1 The Contractor shall advise the Department in writing no later than 2:00 PM on the last business day before October 1st 2007 that the contractor is willing to renew the contract on the same terms and conditions as currently in force or as modified pursuant to a request from the Department.
- 6.15.2 All Contractors require a finding by the Department that the Contractor's performance has been satisfactory. Such findings are within the sole discretion of the Department.
- 6.15.3 If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price for the additional one year shall not exceed the contract price of the original increased/decreased by more than the percentage increase/decrease of the services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
- 6.15.4 If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price for the subsequent renewal period shall not exceed the contract price of the previous renewal period increased/decreased by more than the percentage increased/decreased of the services category of the CPI-W section of the Consumer Price Index of the United States Bureau of labor Statistics for the latest twelve months for which statistics are available.

6.16 Termination, Suspension and Cancellation of Contract

Either party may terminate this contract for its sole convenience effective July 1st of any year by delivery of written notice at least nine months prior to the effective date of cancellation, that is, by the previous October 1st

Furthermore, in the event of emergency requirements which could not have reasonably been foreseen, the Department reserves the right to cancel and terminate this contract, in part or in whole without penalty, upon 60 days written notice to the contractor.

Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

6.17 Transfer of Files

If for any reason the Department decides to no longer contract with the contractor, the contractor agrees to transfer to the party designated by the Department, at no cost, all data, records, computer files, other files, and materials of any sort that were maintained for the Commonwealth. The contractor agrees to assist the Department in understanding, using, and transferring all files and records, including those maintained in computer language.

6.18 HIPAA Privacy Business Associates Agreement

The Contractor agrees to be bound by the HIPAA Privacy Business Associates Agreement. This agreement must be executed prior to any contract award. See Exhibit 4

Claims Break Down

Commonwealth of Virginia - Non-Medicare Statistics Only
 Claim Volumes by Place & Type of Service
 July 2003 through June 2004

Place of Service	Type of Service	Number
Inpatient Facility	Surgical	5,729
	Medical	5,309
	Obstetrics	1,943
	Psychiatric	80
	Radiology/Pathology	8
	Therapy/Other	3
	Total	13,072

Place of Service	Type of Service	Number
Outpatient Facility	Surgical	24,659
	Radiology	52,697
	Medical	58,391
	Lab/Pathology	35,498
	Obstetrical	1,741
	Therapy/Other	6,380
	Total	179,366

Place of Service	Type of Service	Number
Inpatient Professional	Surgery	16,715
	Maternity	3,350
	Evaluation & Management	47,163
	Rad, Path & Laboratory	26,290
	Medicine	11,597
	Diagnostic Testing	1,537
	Vision & Hearing	29
	Psychiatric	16
	Screening Services	202
	Miscellaneous	(46)
	Total	106,853

Place of Service	Type of Service	Number
Outpatient Facility	Surgery	38,350
	Maternity	666
	Evaluation & Management	41,017

Rad, Path & Laboratory	118,513
Medicine	33,505
Diagnostic Testing	7,089
Vision & Hearing	358
Psychiatric	10
Screening Services	31,999
Miscellaneous	5,418

Provider's Office	Surgery	75,706
	Maternity	1,403
	Evaluation & Management	676,642
	Rad, Path & Laboratory	381,666
	Medicine	464,087
	Diagnostic Testing	25,663
	Vision & Hearing	88,184
	Psychiatric	61
	Screening Services	71,867
	Miscellaneous	131,290

Home Health	44,541
Ambulatory Surgical Center	5,633
Pharmacy	19
Ind Clinical Laboratory	436,131

Total Outpatient Professional	2,679,818
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Pharmacy Drug Program	Type of Drug	Number
	Brand	955,006
	Brand with Generic Alternative	46,971
	Generic	849,638
	Total	1,851,615

Enrollment	Type of Coverage/Program	Annual 7/03 -6/04
	Basic COVACare	440,098
	with Expanded Dental	94,372
	with Out of Network	48,137
	with OON and Exp. Dental	35,536
	with OON, Vision/Hearing, Dental	216,437
	with Vision/Hearing, Dental	234,236
	Total Actives, Cobra, Early Retirees	1,068,816

Monthly Average
36,675
7,864
4,011
2,961
18,036
19,520
89,068

Demographic Data -- Total of Male/Female By Age
 (Active Employees- State Group)
 Unwaived Participants in the Active Agencies as of 12/31/2004

Age	Female	Male	Total
18	4	7	11
19	36	26	62
20	53	59	112
21	135	92	227
22	236	175	411
23	379	264	643
24	480	360	840
25	555	434	989
26	551	475	1026
27	601	515	1116
28	617	531	1148
29	579	595	1174
30	626	623	1249
31	688	652	1340
32	698	726	1424
33	799	896	1695
34	846	916	1762
35	832	856	1688
36	873	884	1757
37	865	902	1767
38	902	947	1849
39	984	946	1930
40	1125	1038	2163
41	1129	1075	2204
42	1217	1050	2267
43	1288	1136	2424
44	1331	1088	2419
45	1378	1154	2532
46	1420	1175	2595
47	1452	1250	2702
48	1504	1310	2814
49	1519	1318	2837
50	1637	1405	3042
51	1525	1372	2897
52	1523	1386	2909
53	1438	1366	2804
54	1366	1218	2584
55	1224	1266	2490
56	1226	1301	2527
57	1303	1260	2563
58	1046	1039	2085
59	806	846	1652
60	727	876	1603
61	664	771	1435
62	518	633	1151

63	350	485	835
64	300	349	649
65	198	272	470
66	126	210	336
67	104	141	245
68	81	132	213
69	57	81	138
70	31	62	93
71	25	41	66
72	10	38	48
73	13	31	44
74	7	19	26
75	7	9	16
76	4	11	15
77	4	9	13
78	1	6	7
79	2	3	5
80	2	2	4
81	1	2	3
82	1	4	5
83	2	3	5
84	1	1	2
85	1		1
87	1		1
Total	42034	40125	82159

PARTICIPATION IN STATE PROCUREMENT TRANSACTIONS BY
SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES

The following definitions will be used in completing the information required by one or more of the three categories of businesses contained in this Appendix as applicable to your firm: (1) Participation by Small Businesses; (2) Participation by Businesses Owned by Women; and (3) Participation by Businesses Owned by Minorities.

DEFINITIONS

Period is the specified 12-month period for which the information provided in this list is applicable and valid. The period will be specified as month and year.

Firm Name, Address and Phone Number is the name, address and business phone number of the small business, women-owned business or minority-owned business with which the Offeror has contracted or done business over the specified period or plans to involve on this contract, as applicable.

Contact Person is the name of the individual in the specified small business, women owned business or minority-owned business who would have knowledge of the specified contracting and would be able to validate the information provided in this list.

Type Goods or Services is the specific goods or services the Offeror has contracted for from the specified small, women-owned or minority-owned business over the specified period of time or plans to use in the performance of this contract, as applicable. The Offeror will asterisk (*) those goods and services that are in the Offeror's primary business or industry.

Dollar Amount is the total dollar amount (in thousands of dollars) the Offeror has contracted for or has done business with the listed firm during the specified period or plans to use on this contract, as applicable.

% Total Company Expenditures for Goods and Services is calculated by dividing the dollar amount of business conducted or contracted for with the indicated firm over the specified period by the total expenditure of the Offeror over the specified period for goods and services.

% of Total Contract is calculated by dividing the estimated dollars planned for the indicated firm on this contract by the total Offeror estimated price of this contract.

1. PARTICIPATION BY SMALL BUSINESSES

- A. Offeror certifies that it () is, () is not, a small business concern. For the purpose of this procurement, a small business is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is contracting and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the United States Small Business Administration.
- B. List small businesses with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12-month period for which data are available. Offerors are encouraged to provide additional information and expand upon the following format:

PERIOD: From: _____ To: _____

FIRM NAME, ADDRESS & PHONE NUMBER	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	% TOTAL COMPANY EXPENDITURES FOR GOODS & SERVICES

1. PARTICIPATION BY SMALL BUSINESSES

(Continued)

- C. Describe Offeror's plans to involve small businesses in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

FIRM NAME, ADDRESS & PHONE NUMBER	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	% OF TOTAL CONTRACT

2. PARTICIPATION BY BUSINESSES OWNED BY WOMEN

- A. Offeror certifies that it () is, () is not, a women's business enterprise or women-owned business. For the purpose of this procurement, a women-owned business is a concern that is at least 51 percent owned by a woman or women who also control and operate it. In this context, "control" means exercising the power to make policy decisions, and "operate" means being actively involved in the day-to-day management.
- B. List businesses owned by women with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12-month period for which data are available. Offerors are encouraged to provide additional information and expand upon the following format:

PERIOD: From: _____ To: _____

FIRM NAME, ADDRESS & PHONE NUMBER	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	% OF TOTAL CONTACT EXPENDITURES FOR GOODS & SERVICES

2. PARTICIPATION BY BUSINESSES OWNED BY WOMEN

(Continued)

- C. Describe Offeror's plans to involve businesses owned by women in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

FIRM NAME, ADDRESS & PHONE NUMBER	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	% OF TOTAL CONTRACT

3. PARTICIPATION BY BUSINESSES OWNED BY MINORITIES

- A. Offeror certifies that it () is, () is not, a minority business enterprise or minority-owned business. For the purpose of this procurement, a minority-owned business is a concern that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Blacks, Hispanic Americans, Asian Americans, American Indians, Eskimos, and Aleuts.
- B. List businesses owned by minorities with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12-month period for which data are available. Offerors are encouraged to provide additional information and expand upon the following format:

PERIOD: From: _____ To: _____

FIRM NAME, ADDRESS & PHONE NUMBER	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	% OF TOTAL CONTRACT EXPENDITURES FOR GOODS & SERVICES

3. PARTICIPATION BY BUSINESSES OWNED BY MINORITIES

(Continued)

- C. Describe Offeror's plans to involve minority businesses in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

FIRM NAME, ADDRESS & PHONE NUMBER	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	% OF TOTAL CONTACT

Current Appeal Process Overview:

1. The appellant must have exhausted all appeals at the contractor,
2. The appeal must be in writing,
3. An appeal notice is generated, and, if desired, an Informal Fact Finding Consultation (IFFC) is scheduled.
4. The appeals calendar is established,
5. Related information is requested from the Plan,
6. Additional information is gathered from the appellant and/or his provider.
7. Medical Appeals:
 - If an IFFC is scheduled, relevant documents are furnished to the appellant prior to the IFFC.
 - Following IFFC, file and additional information submitted by the member are sent to external impartial health entity for review, whose determination is final and binding consistent with law and policy.
 - If an IFFC is **not** requested, appeal is immediately forwarded to external impartial health entity for review, whose determination is final and binding consistent with law and policy.
8. The external impartial health entity will provide clinical and legal expertise to review medical, legal, and contractual issues relevant to a medical appeal.
9. Based on external impartial health entity's recommendation, DHRM Director's final case determination is communicated to the member via certified letter.
10. If the final determination is a denial, the determination letter includes language about further appeals under the Administrative Process Act (APA) and encloses the relevant section of the Code.

Appeals Processed (FY 7/1/03 – 6/30/04)

# medical appeals	47
# administrative appeals	<u>57</u>
Total # appeals	104

Office of State Health Benefits Programs
of the
Department of Human Resource
Management

H I PAA Privacy
Business Associate
Agreement
With
(Insert Company Name)

Effective Date:
(Insert Date)

1. PREAMBLE

Pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996, and its implementing regulation, the Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. Section 84,462 et seq. (Dec. 28, 2000) and all subsequent provisions and Federal guidance ("HIPAA Privacy Rule"), the Commonwealth of Virginia's Office of Health Benefits Programs ("Covered Entity"), and (name of the Business Associate), a (state) corporation, ("Business Associate"), (jointly "the Parties"), wish to enter into this Business Associate Agreement ("Agreement") that addresses the requirements of the HIPAA Privacy Rule with respect to "business associates" as that term is defined in that Rule.

This Agreement is intended to ensure that the Business Associate will establish and implement appropriate safeguards (including certain administrative requirements) for "Protected Health Information" (as defined in the HIPAA Privacy Rule and copied below) that the Business Associate may create, receive, use, or disclose in connection with certain functions, activities, or services (collectively "Services") to be provided by Business Associate to Covered Entity. These Services are identified in a separate agreement between the Parties entitled (RFP# OHBXX-XX) and dated (Insert date) ("Service Agreement").

The Parties acknowledge and agree that in providing Services, Business Associate will create, receive, use, or disclose Protected Health Information. In connection with Business Associate's creation, receipt, use, or disclosure of Protected Health Information, Business Associate, and Covered Entity hereby agree as follows:

II. DEFINITIONS

(a) *General definitions.* All capitalized terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.

(b) *Specific definitions.*

(i) *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

(ii) *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

(iii) *Protected Health Information.* "Protected Health Information" ("PHI") shall mean individually identifiable health information maintained and transmitted in any form or medium, including, without limitation, all information (including demographic, medical, and financial information), data, documentation, and materials that is created or received by a health care provider, health plan, employer, or health care clearinghouse, and relates to: (A) the past, present, or future physical or mental health or condition of an individual; (B) the provision of health care to an individual; or (C) the past, present, or future payment for the provision of health care to an individual, and that identifies or could reasonably be used to identify an individual. Protected Health Information does not include health information that has been de-identified in accordance with the standards for de-identification provided for in the Privacy Rule.

(iv) *Designated Record Set.* "Designated Record Set" shall mean a group of records maintained by or for the Covered Entity that is:

(A) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or

(B) Used, in whole and in part, by or for the Covered Entity to make decisions about individuals.

For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the Covered Entity.

- (v) Data Aggregation. "Data Aggregation" shall mean, with respect to Protected Health Information created or received by the Business Associate in its capacity as the Business Associate of the Covered Entity, the combining of such Protected Health Information by the Business Associate with the Protected Health Information received by the Business Associate in its capacity as business associate of another entity to permit data analyses that relate to the health care operations of the respective entities.
- (vi) Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- (vii) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services ("HHS") or his designee.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- (h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

- (j) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section III (i) of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- (a) *General Uses and Disclosures.* Business Associate agrees to create, receive, use, or disclose Protected Health Information only in a manner that is consistent with this Agreement or the Privacy Rule and only in connection with providing Services to the Covered Entity identified in the Service Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. In providing Services, Business Associate, for example, will be permitted to use and disclose Protected Health Information for "treatment, payment and health care operations" in accordance with the Privacy Rule.
- (b) *Other Uses and Disclosures:*
 - (i) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - (ii) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided the disclosures are Required By Law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - (iii) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).

V. OBLIGATIONS OF THE COVERED ENTITY

- (a) *Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions:*
 - (i) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
 - (ii) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
 - (iii) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522.
- (b) *Permissible Requests by Covered Entity.* Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except Protected Health Information for those activities performed by the Business Associate in accordance with the provisions of the Service Agreement between the parties.

VI. TERM AND TERMINATION

- (a) *Term.* The Term of this Agreement shall be effective as of April 1, 2003, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the Termination provisions in this Section.
- (b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the time agreed to by the Parties, or if Business Associate has breached a material term of this Agreement and cure is not possible, Covered Entity may terminate this Agreement [and the applicable Sections of the Service Agreement] upon written notice to Business Associate.
- (c) *Effect of Termination:*
 - (i) Except as provided in paragraph (c)(ii) of this Section IV, upon Termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - (ii) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for as long as the Business Associate maintains such Protected Health Information.

VII. MISCELLANEOUS

- (a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended and for which compliance is required.
- (b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (c) *Survival.* The respective rights and obligations of Business Associate under Section VI(c)(i)&(ii) of this Agreement shall survive the termination of this Agreement.
- (d) *Interpretation:*
 - (i) Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.
 - (ii) In the event of an inconsistency between the provisions of this Agreement and the Privacy Rule, as may be amended from time to time, as a result of interpretations by HHS, a court, or another regulatory agency with authority over the Parties, the interpretation of HHS, such other court or regulatory agency shall prevail.
 - (iii) In the event provisions of this Agreement differ from those mandated by the Privacy Rule but are nonetheless permitted by the Rule, the provisions of this Agreement shall control.

- (e) *Complete Integration.* This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written, unless expressly incorporated herein, related to the subject matter of the Agreement. Unless expressly provided otherwise herein, this Agreement may not be modified unless in writing signed by the duly authorized representatives of both parties. If any provision or part thereof is found to be invalid, the remaining provisions shall remain in full force and effect.
- (f) *Successors and Assigns.* This Agreement will inure to the benefit of and be binding upon the successors and assigns of Covered Entity and Business Associate. However, this Agreement is not assignable by either party without the prior written consent of the other party, except that Business Associate may assign or transfer this Agreement to any entity owned or under common control with Business Associate.
- (g) *Limitation of Liability.* Except as otherwise provided for in the Privacy Rule, neither party shall be liable for other party's loss of profits, attorney's fees or interest, or for any incidental, indirect, special, or consequential damages as a result of this Agreement.
- (h) *No Third Party Beneficiaries.* Except as expressly provided for in the Privacy Rule, there are no third party beneficiaries to this Agreement. Business Associate's obligations are to Covered Entity only.
- (i) *Confidentiality.* Except as otherwise provided for in the Privacy Rule or this Agreement, neither party will disclose the terms of this Agreement to any third party without the other party's written consent.
- (j) *Counterparts.* This Agreement may be executed in two or more counterparts, each of which may be deemed an original.

VIII. ACKNOWLEDGEMENT AND SIGNATURES

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT,
UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS.

For :	For Department of Human Resource Management
By:	By:
Print Name:	Print Name: Sara Redding Wilson
Title:	Title: Director
Date:	Date:

Appendix 1

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

STANDARD CONTRACT

This contract is entered into this _____, 2005, by _____, hereinafter called "Contractor" and the Commonwealth of Virginia, Department of Human Resource Management, hereinafter called "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide the services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF CONTRACT: From July 1, 2005, through June 30, 2007 with 3 one-year renewals, including precontract work as described in the contract documents.

COMPENSATION AND METHOD OF PAYMENT: The Contractor shall be paid monthly according to the terms of its accepted proposal.

CONTRACT DOCUMENTS: The Contract Documents shall consist of this signed Contract; the Request for Proposals; Independent Review Organization Services; the proposal submitted by the Contractor dated _____, 2005; _____; the general conditions, special conditions, specifications, and other data contained in the Request for Proposals.

Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in the Request for Proposals.

In witness whereof, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

PURCHASING AGENCY:

By: _____

By: _____

Print Name

Print Name

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form: _____

Office of the Attorney General

Appendix 2

PRICING SCHEDULE

Cost to provide Independent Review Services per RFP \$_____per case